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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,156	05/31/2001	James D. Benson	758.1226US01	7441
23552	7590	12/11/2003	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			GREENE, JASON M	
			ART UNIT	PAPER NUMBER

1724

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,156

Applicant(s)

BENSON ET AL.

Examiner

Jason M. Greene

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-13,15-20,22-27 and 29-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,6,8,10-13,15,16,18-20,25-27,29-39,41 and 43-45 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 5,7,9,17,22-24,40 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Response to Arguments

1. Applicant's arguments, see page 10, line t to page 12, line 29, filed 15 October 2003, with respect to claims 1-3, 5-13, 15-20, 22-27, and 29- 45 have been fully considered and are persuasive. The 35 USC 103 (a) rejections of claims 1-3, 5-13, 15-20, 22-27, and 29- 45 in view of Kahlbaugh et al. '399 have been withdrawn.

Claim Objections

2. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 is dependent upon claim 4. However, claim 4 was cancelled in the amendment filed 15 October 2003. Therefore, the Examiner suggests Applicants amend claim 9 such that the claim depends from a pending claim.

3. Claims 22-24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 22-24 are dependent upon claim 21. However, claim 21 was cancelled in the amendment filed 15 October 2003. Therefore, the Examiner suggests Applicants amend claims 22-24 such that the claims depend from a pending claim.

4. Claims 5 and 7 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 5 and 7 recite the efficiency of the substrate being about 5% to about 80%. However, claim 1, from which claims 7 and 8 depend, recites the substrate having an efficiency of greater than 10%. Therefore, claims 5 and 7 do not further limit the subject matter of claim 1 because the ranges recited in the dependent claims include efficiencies not recited in claim 1 (i.e. between about 5% and 10%). The Examiner suggests Applicants amend claims 5 and 7 to recite that the substrate has an efficiency of greater than 10% to about 80%.

5. Claim 17 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 17 recites the efficiency of the substrate being about 5% to about 80%. However, claim 11, from which claim 17 depends, recites the substrate having an efficiency of greater than 10%. Therefore, claim 17 does not further limit the subject matter of claim 11 because the ranges recited in the dependent claim include efficiencies not recited in claim 11 (i.e. between about 5% and 10%). The Examiner suggests Applicants amend claim 17 to recite that the substrate has an efficiency of greater than 10% to about 80%.

6. Claims 40 and 42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 40 and 42 recite the efficiency of the substrate being about 5% to about 80%. However, claim 36, from which claims 40 and 42 depend, recite the substrate having an efficiency of greater than 20%. Therefore, claims 40 and 42 do not further limit the subject matter of claim 36 because the ranges recited in the dependent claims include efficiencies not recited in claim 36 (i.e. between about 5% and 20%). The Examiner suggests Applicants amend claims 5 and 7 to recite that the substrate has an efficiency of greater than 20% to about 80%.

Allowable Subject Matter

7. Claims 1-3, 6, 8, 10-13, 15, 16, 18-20, 25-27, 29-39, 41, and 43-45 are allowed.
8. Claims 5, 7, 9, 17, 22-24, 40, and 42 would be allowable if rewritten or amended to overcome the objections set forth in this Office action.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Greene whose telephone number is (703) 308-6240. The examiner can normally be reached on Tuesday - Friday (7:00 AM to 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jason M. Greene
Examiner
Art Unit 1724



jmg
December 4, 2003

DUANE SMITH
PRIMARY EXAMINER


12-503